voters had failed to receive notice of the meeting. The court held that the prosecutor was estopped from questioning its regularity. *Brown* v. *Street, etc., of Woodbridge*, 55 Atl. Rep. 1080 (N. J., Sup. Ct.). Here, although the time was set by law, the place was left to be determined by the notice, so that by the strict construction of the New Jersey courts[5] any irregularity in the notice would be fatal. The court therefore was forced to take refuge in the doctrine of estoppel to defeat the action. Such a course is very hard to support in the absence of anything showing that the prosecutor knew of the irregularity of the notice when he participated in the meeting.[6]

It would seem to be wiser policy to avoid such technical distinctions and to regard these provisions for notice as directory in all cases. Their violation should make the vote illegal only when harm actually results. This has long been the view in New York and Iowa,[7] and has been followed elsewhere.[8] In case of an election it ought not to be enough to show that one or two voters have lost their votes. If the great body of electors voted, the election should not be set aside unless it is apparent that the result might have been changed had they all voted.[9] This is in accord with those numerous cases which hold that an election should not be set aside for irregularities which do not affect the result.[10] A meeting, however, requires a stricter test, as one man might, by voicing his views, influence the result. The proceedings therefore should be set aside if the complainant himself was prevented from attending. In either case it is the harm caused by the defective notice, and not the defective notice itself, which should render the action of the voters illegal.

ENFORCEMENT OF OBLIGATIONS IMPOSED BY FOREIGN CORPORATION LAWS. — In a foreign jurisdiction judgment will be granted only on those obligations which are remedial rather than penal.[1] In enforcing a penal obligation the state as sovereign punishes an individual. This the sovereign can do only within its own jurisdiction. Nor does the fact that a benefit inures to an individual from such punishment necessarily prevent its being penal. For instance, the obligation to pay exemplary damages is regarded as penal.[2] It is often, however, a matter of some difficulty to say whether or not an obligation is of this class. In this respect certain cases where liability is imposed by the corporation law of a foreign jurisdiction appear to have given the courts peculiar trouble. That corporations doing business in a foreign jurisdiction may not escape wholesome restrictions imposed by the corporation laws of the state creating them, it is well that the obligation should not be declared penal unless such an intent on the part of the legislature clearly appears. Some obligations, however, are necessarily penal. Thus if the obligation is imposed without reference to the resulting damage, it is submitted that it must be regarded as a punishment. If, on the other hand, the extent of the liability imposed is made to correspond to the

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[5] Canda M'f'g Co. *v.* Woodbridge, 58 N. J. Law 134.
[6] School District *v.* Atherton, 12 Met. (Mass.) 105.
[7] People *v.* Peck, 11 Wend. (N. Y.) 604; Dishon *v.* Smith, 10 Ia. 212.
[8] Seymour *v.* City of Tacoma, 6 Wash. 427.
[9] Adsit *v.* Secretary of State, 84 Mich. 420.
[10] Fry *v.* Booth, 19 Oh. St. 25; Sprague *v.* Norway, 31 Cal. 173.

[1] Blaine *v.* Curtis, 59 Vt. 120.
[2] *Ibid.*

damage suffered, the obligation is merely remedial. Applying this test, obviously the ordinary individual liability of stockholders is not penal.[3] On the other hand, where directors are made individually liable for the debts of the company when they have signed false certificates as to the amount of the capital stock paid in, the obligation seems clearly penal, and the holding of the Supreme Court of the United States to the contrary[4] is hard to defend. In a recent New York case the court dealt with a New Jersey statute which made the directors liable to the corporation for dividends declared and paid out of the capital stock. The court held that the obligation was not penal. *Hutchinson* v. *Stadler*, 85 N. Y. App. Div. 424. This view seems in accord with the test suggested.

Having established that an obligation is not penal, it still does not necessarily follow that it will be enforced in a foreign jurisdiction. Where a statute creates a right which did not exist at common law, and prescribes a remedy, this remedy is considered to be the only form of remedy which can be used,[5] on the theory that such was the intent of the legislature. This doctrine has been applied to corporation statutes of the sort under discussion.[6] Whenever, in a foreign jurisdiction, the enforcement of this prescribed remedy involves practical difficulties, a refusal to enforce it might well be justified. For example, where a foreign corporation and a large number of non-resident stockholders are necessary or desirable parties to the bill in equity which the statute prescribes, the court would refuse jurisdiction since it could not well control the parties.[7] Again, the local courts might be without the machinery to enforce the obligation imposed by the foreign law. This objection to enforcement, however, might be lessened by the existence of a similar local statute, in which case either the local machinery has been provided, or the courts have learned to do without it in dealing with the local cases. This consideration apparently influenced the judges in the case cited in the text. Their opinion leans to the side of enforcing such obligations, and this, in general, seems to be the better view.

RECOVERY IN AN ACTION OF DECEIT FOR EXPRESSION OF OPINION. — It is authoritatively laid down in the text-books and cases that in an action for deceit the false representations must be as to material facts, and that no liability is incurred for the mere expression of opinion.[1] The reason usually given for the rule is, that the law will not protect those who do not exercise ordinary prudence. It is apparent that this reason applies only to those few cases where it can fairly be said that the injured party was negligent in relying upon the statements of opinion. Even there, however, the reason seems objectionable, for it runs contrary to the fundamental rule of torts that contributory negligence is no defense to actions for intentional wrongs. It may of course be contended that that rule applies only to cases of physical injury, but on principle there appears no more reason why the law should require persons to guard against deception than against wilful physical injury.

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[3] Hawthorne *v.* Calef, 2 Wall. (U. S.) 10.
[4] Huntington *v.* Attrill, 146 U. S. 657.
[5] Farmers, etc., Bank *v.* Dearing, 91 U. S. 29.
[6] Erickson *v.* Nesmith, 15 Gray (Mass.) 221.
[7] Erickson *v.* Nesmith, 4 Allen (Mass.) 233.

[1] 1 Bigelow, Fraud 473.